

House File 609 - Introduced

HOUSE FILE 609
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 151)

A BILL FOR

1 An Act relating to the probate and trust codes and state
2 inheritance tax and including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 422.7, subsection 4, Code 2011, is
2 amended by striking the subsection.

3 Sec. 2. Section 450.4, subsections 7 and 8, Code 2011, are
4 amended by striking the subsections.

5 Sec. 3. Section 633.237, subsections 1, 2, and 4, Code 2011,
6 are amended to read as follows:

7 1. Following the appointment of a personal representative
8 of the estate of the decedent, ~~who is not the spouse~~, the
9 personal representative shall cause to be served a written
10 notice upon the surviving spouse pursuant to section 633.40,
11 subsection 5, notifying the surviving spouse that unless,
12 within four months after service of the notice, the spouse
13 files an election in writing with the clerk of court electing
14 the share as set forth in section 633.236 and sections 633.238
15 through 633.246, the spouse shall be deemed to take under
16 the will or to receive the intestate share. If, within the
17 four-month period following service of the notice, an affidavit
18 is filed setting forth that the surviving spouse is incapable
19 of making the election and does not have a conservator, the
20 personal representative shall make application to the court for
21 an order pursuant to section 633.244.

22 2. Following the death of a settlor of a revocable trust,
23 the trustee of such revocable trust ~~who is not the spouse~~
24 shall cause to be served a written notice upon the surviving
25 spouse pursuant to section 633.40, subsection 5, notifying
26 the surviving spouse that unless, within four months after
27 service of the notice, the spouse files an election with the
28 trustee electing the share as set forth in section 633.236 and
29 sections 633.238 through 633.246, the spouse shall be deemed
30 to take under the terms of the revocable trust. If, within the
31 four-month period following service of the notice, an affidavit
32 is filed setting forth that the surviving spouse is incapable
33 of making the election and does not have a conservator, the
34 trustee shall make application to the court for an order
35 pursuant to section 633.244.

1 4. The notice provisions under subsections 1 and 2 are not
2 applicable if the surviving spouse ~~is a personal representative~~
3 ~~of the estate or a trustee of a revocable trust or if the~~
4 ~~surviving spouse~~ or the spouse's conservator files, at any
5 time, an election to take under the will, receive the intestate
6 share, or take under the revocable trust. If the surviving
7 spouse fails to file an election under this section within four
8 months of the ~~decedent's death~~ date notice is served, it shall
9 be conclusively presumed that the surviving spouse elects to
10 take under the will, receive the intestate share, or take under
11 the revocable trust.

12 Sec. 4. Section 633.246, Code 2011, is amended to read as
13 follows:

14 **633.246 Election not subject to change.**

15 1. An election by or on behalf of a surviving spouse to
16 take the share provided in section 633.211, 633.212, 633.236,
17 633.238, 633.240, or 633.244 shall be binding and shall not be
18 subject to change except for such causes as would justify an
19 equitable decree for the rescission of a deed.

20 2. An affirmative election to take under the will, receive
21 the intestate share, or take under the revocable trust shall be
22 irrevocable when filed as provided in section 633.237.

23 Sec. 5. Section 633.374, Code 2011, is amended to read as
24 follows:

25 **633.374 Allowance to surviving spouse.**

26 ~~1. If the personal representative of the estate is not~~
27 ~~the decedent's spouse, the~~ The personal representative of the
28 estate shall ~~cause written notice concerning support to be~~
29 ~~mailed~~ mail to the surviving spouse pursuant to section 633.40,
30 subsection 5, a written notice regarding the right to request
31 a spousal allowance. The notice shall inform the surviving
32 spouse of the surviving spouse's right to ~~apply,~~ submit an
33 application to the court within four months of service of the
34 notice, for support for a period of twelve months following
35 the death of the decedent, and for support of the decedent's

1 dependents who reside with the spouse for the same period of
2 time.

3 2. The court shall, upon application, set off and order
4 paid to the surviving spouse, as part of the costs of
5 administration, sufficient of the decedent's property including
6 assets held in a revocable trust of which the decedent is the
7 settlor to the extent that estate assets are not sufficient as
8 it deems reasonable for the proper support of the surviving
9 spouse for the period of twelve months following the death of
10 the decedent. ~~If the application is not made by the personal~~
11 ~~representative, notice~~ Notice of hearing upon the application
12 shall be given to the surviving spouse, personal representative
13 if the application is not made by the personal representative,
14 trustee of any revocable trust of which the decedent is the
15 settlor, and all other interested persons. The court shall
16 take into consideration the station in life of the surviving
17 spouse, ~~and~~ the assets and condition of the estate and any
18 revocable trust of which the decedent is the settlor, the
19 nonprobate assets received by the surviving spouse by reason of
20 the death of the decedent, and the income and other resources
21 of the surviving spouse. If the trustee of a revocable
22 trust of which the decedent was a settlor has previously made
23 payments under section 633A.3114 to the spouse, the court shall
24 reduce the award by the amount of such payments. The allowance
25 shall also include such additional amount as the court deems
26 reasonable for the proper support, during such period, of
27 dependents of the decedent who reside with the surviving
28 spouse. Such allowance to the surviving spouse shall not abate
29 upon the death or remarriage of such spouse. If an application
30 for support has not been filed within four months following
31 service of the notice by or on behalf of the surviving
32 spouse and the dependents of the decedent who reside with the
33 surviving spouse, the surviving spouse and the dependents of
34 the decedent shall be deemed to have waived the right to apply
35 for support during the administration of the estate.

1 3. A surviving spouse who qualifies for a support allowance
2 under this section may waive the right to such allowance for
3 the surviving spouse and for the dependents of the decedent
4 who reside with the surviving spouse by filing an affidavit
5 acknowledging receipt of notice and irrevocably waiving the
6 right to support under this section.

7 Sec. 6. Section 633.375, Code 2011, is amended to read as
8 follows:

9 **633.375 Review of allowance to surviving spouse.**

10 The court may, upon the petition of ~~the spouse, or other~~
11 ~~person interested~~ any interested person, and after hearing
12 pursuant to notice to all interested parties, review ~~such the~~
13 allowance and increase or decrease the ~~same amount and make~~
14 such other orders as it may deem proper.

15 Sec. 7. Section 633.376, Code 2011, is amended to read as
16 follows:

17 **633.376 Allowance to children who do not reside with**
18 **surviving spouse.**

19 1. The court may also make an allowance under the same terms
20 and conditions as provided in section 633.374 of an amount the
21 court deems reasonable in light of the assets and condition of
22 the estate, to provide for proper support during the period of
23 twelve months following the decedent's death to a child of the
24 decedent who does not reside with the surviving spouse and is
25 any of the following:

26 a. less Less than eighteen years of age.

27 b. or who is between Between the ages of eighteen and
28 twenty-two years who is any of the following:

29 (1) regularly Regularly attending an accredited school in
30 pursuance of a course of study leading to a high school diploma
31 or its equivalent.

32 (2) or regularly Regularly attending a course of
33 vocational-technical training either as a part of a regular
34 school program or under special arrangements adapted to the
35 individual person's needs.

1 ~~(3) or is~~ Is, in good faith, a full-time student in a
2 college, university, or community college~~;~~.

3 ~~(4) or has~~ Has been accepted for admission to a college,
4 university, or community college and the next regular term has
5 not yet begun~~;~~.

6 ~~c. or Is~~ Is a child of any age who is dependent because of
7 physical or mental disability~~;~~ ~~who does not reside with the~~
8 ~~surviving spouse, of an amount it deems reasonable in the light~~
9 ~~of the assets and condition of the estate, to provide for the~~
10 ~~child's proper support during the period of twelve months.~~

11 2. The estate's personal representative shall ~~cause~~
12 ~~written notice to be mailed~~ mail pursuant to section 633.40,
13 subsection 5, to the legal guardian of each child qualified
14 under subsection 1 and to each child or the guardian ad litem
15 for such child if necessary, who has no legal guardian, a
16 written notice regarding the right to request an allowance.
17 The notice shall inform the child and the child's guardian,
18 if applicable, of the right to ~~apply~~ submit an application to
19 the court, within four months after service of the notice, for
20 support for a period of twelve months following the decedent's
21 death. If an application for support has not been filed within
22 four months after service of the notice by or on behalf of the
23 child qualifying for support under subsection 1, the child
24 shall be deemed to have waived the right to support under this
25 section. A child who qualifies for support under this section
26 or the child's guardian ad litem may waive the child's right
27 to such support by filing an affidavit acknowledging receipt
28 of notice and irrevocably waiving the child's right to support
29 under this section.

30 Sec. 8. Section 633.377, Code 2011, is amended to read as
31 follows:

32 **633.377 Review of allowance to minor children.**

33 The court may, upon the petition of any interested person,
34 and after hearing pursuant to notice to all interested parties,
35 review the allowance made to the minor children who do not

1 reside with the surviving spouse and may increase or decrease
2 the ~~same~~ amount and make such other orders as it may deem
3 proper.

4 Sec. 9. Section 633.471, Code 2011, is amended to read as
5 follows:

6 **633.471 Right of retainer.**

7 When a distributee of an estate is indebted to the estate,
8 or if a distributee takes as an heir of a deceased devisee
9 indebted to the estate, the amount of such indebtedness, if
10 due, or the present worth of the indebtedness, if not due,
11 shall be treated as a setoff and retained by the personal
12 representative out of any testate or intestate property,
13 real or personal, of the estate to which such distributee is
14 entitled. In intestate estates, the personal representative
15 shall have the same right of setoff and retainer against an
16 heir whose ancestor was indebted to the estate. The right of
17 setoff and retainer shall be prior and superior to the rights
18 of judgment creditors, heirs or assigns of such distributee ~~and~~
19 ~~shall not be barred by the statute of limitations, nor by a~~
20 ~~discharge in bankruptcy.~~

21 Sec. 10. Section 633.561, Code 2011, is amended by adding
22 the following new subsection:

23 NEW SUBSECTION. 7. If the court determines upon application
24 that it is appropriate or necessary, the court may order that
25 the attorney appointed pursuant to this section be given copies
26 of and access to the proposed ward's health information by
27 describing with reasonable specificity the health information
28 to be disclosed or accessed, for the purpose of fulfilling the
29 attorney's responsibilities pursuant to this section.

30 Sec. 11. Section 633A.2203, Code 2011, is amended by adding
31 the following new subsection:

32 NEW SUBSECTION. 5. A spendthrift provision, or a provision
33 giving the trustee discretion to distribute income or principal
34 to a beneficiary or among beneficiaries, in the terms of the
35 trust is presumed to constitute a material purpose of the

1 trust.

2 Sec. 12. Section 633A.3104, subsection 2, Code 2011, is
3 amended by striking the subsection and inserting in lieu
4 thereof the following:

5 2. Following the death of a settlor, if the settlor's estate
6 is inadequate to satisfy the debts of the settlor and the
7 charges of the settlor's estate, the property of a revocable
8 trust, to the extent of the value of the property over which
9 the settlor had a power of revocation, is subject to all of the
10 following:

11 a. The charges of the settlor's estate.

12 b. The debts of the settlor unless barred as provided in
13 section 633A.3109.

14 Sec. 13. Section 633A.3104, Code 2011, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 2A. The personal representative of the
17 settlor's estate shall submit a statement to the trustee
18 within the period for filing claims against the trust of the
19 amount by which the assets of the estate are insufficient
20 to pay the debts and charges. Subject to the provisions of
21 section 633A.3111, the trustee shall remit to the personal
22 representative the amount needed to pay the charges and shall
23 pay the debts directly to the creditors unless the trustee and
24 personal representative agree to a different manner of payment.

25 Sec. 14. Section 633A.3108, Code 2011, is amended by
26 striking the section and inserting in lieu thereof the
27 following:

28 **633A.3108 Limitation on contest of revocable trust.**

29 Unless previously barred by adjudication, consent, or other
30 limitation, if notice is published or given as provided in
31 section 633A.3110 within one year of the settlor's death, a
32 proceeding to contest the validity of a revocable trust must be
33 brought within the period specified in that notice. If notice
34 is not published or given within that period, a proceeding to
35 contest the validity of a trust must be brought no later than

1 one year following the death of the settlor.

2 Sec. 15. Section 633A.3109, Code 2011, is amended by
3 striking the section and inserting in lieu thereof the
4 following:

5 **633A.3109 Limitation on creditor rights against revocable**
6 **trust assets after settlor's death.**

7 1. If notice is published or given as provided in section
8 633A.3110 within one year of the settlor's death, any claim
9 against the trust assets will be forever barred unless the
10 creditor files a claim as provided for and within the period
11 specified in the notice.

12 2. If notice is not published or given, a creditor of
13 a deceased settlor of a revocable trust must bring suit to
14 enforce its claim against the assets of the decedent's trust
15 within one year of the decedent's death or be forever barred
16 from collecting against the trust assets. The one-year
17 limitation period shall not be extended by the commencement of
18 probate administration for the settlor.

19 3. The notice under sections 633.230 and 633.304 in probate
20 of the settlor's estate does not affect a creditor's claim
21 under this section.

22 Sec. 16. Section 633A.3110, Code 2011, is amended by
23 striking the section and inserting in lieu thereof the
24 following:

25 **633A.3110 Notice to creditors, heirs, and spouse.**

26 1. As used in this section, "heir" means only such person
27 who would, in an intestate estate, be entitled to a share under
28 section 633.219.

29 2. The trustee may give notice as described herein to
30 creditors, heirs, and the surviving spouse of the settlor for
31 the purpose of establishing their rights to contest the trust
32 and to file claims against the trust assets.

33 a. No later than the end of the one-year period beginning
34 with the settlor's date of death, the trustee may publish a
35 notice once each week for two consecutive weeks in a daily or

1 weekly newspaper of general circulation published in the county
2 in which the settlor was a resident at the time of death. If
3 the settlor was not a resident of Iowa, but the principal place
4 of administration is in Iowa, the trustee shall publish notice
5 in the county that is the principal place of administration
6 pursuant to section 633A.6102.

7 *b.* If notice is published pursuant to paragraph "a", the
8 trustee shall also give notice by ordinary mail within one year
9 of the settlor's death to the surviving spouse and the heirs of
10 the decedent whose identities are reasonably ascertainable, at
11 such person's last known address.

12 *c.* If notice is published pursuant to paragraph "a", the
13 trustee shall also give notice to creditors of the settlor who
14 are known or reasonably ascertainable within the period for
15 filing claims specified in the published notice and who the
16 trustee believes own or possess a claim, which will not or may
17 not be paid or otherwise satisfied during the administration of
18 the trust, by ordinary mail to each person at the person's last
19 known address.

20 *d.* The notices described in this subsection shall, if given,
21 include notification of the settlor's death, and the fact that
22 any action to contest the validity of the trust must be brought
23 within the later to occur of four months from the date of the
24 second publication of the notice made pursuant to paragraph "a"
25 or thirty days from the date of mailing of the notice pursuant
26 to paragraph "b", and that any claim against the trust assets
27 will be forever barred unless proof of a creditor's claim
28 is mailed to the trustee by certified mail, return receipt
29 requested, within the later to occur of four months from the
30 second publication of notice pursuant to paragraph "a" or
31 thirty days from the date of mailing the notice pursuant to
32 paragraph "b", if required. A person who is not entitled to
33 receive a mailed notice or who does not make a claim within the
34 appropriate period is forever barred from asserting any claim
35 against the trust or the trust assets.

1 3. If notice is published pursuant to paragraph "a", claims
2 of creditors that are discovered or which become reasonably
3 ascertainable after the end of the notice period are barred.

4 4. If notice is not published and given as provided in
5 this section, the right to challenge the trust and file claims
6 against the trust assets are limited as provided in sections
7 633A.3108 and 633A.3109.

8 5. The notice described in subsection 2 shall be
9 substantially in the following form:

10 To all persons regarding, deceased, who died on
11 or about, (year) You are hereby notified that
12 is the trustee of the Trust.

13 Any action to contest the validity of the trust must be
14 brought in the District Court of County, Iowa, within
15 the later to occur of four months from the date of second
16 publication of this notice, or thirty days from the date of
17 mailing this notice to all heirs of the decedent settlor
18 and the spouse of the decedent settlor whose identities are
19 reasonably ascertainable. Any suit not filed within this
20 period shall be forever barred.

21 Notice is further given that any person or entity possessing
22 a claim against the trust must mail proof of the claim to the
23 trustee at the address listed below via certified mail, return
24 receipt requested, by the later to occur of four months from
25 the second publication of this notice or thirty days from the
26 date of mailing this notice if required, or the claim shall be
27 forever barred, unless paid or otherwise satisfied.

28 Dated this day of, (year)....

29 Trust

30

31 Trustee

32 Address:

33

34 Date of second publication ... day of, (year)

35 6. The proof of claim must be in writing stating the party's

1 name and address and describing the nature and amount of the
2 claim, if ascertainable, and accompanied by an affidavit of the
3 party or a representative of the party verifying the amount
4 that is due, or when the amount will become due, that no
5 payments have been made on the claim that are not credited, and
6 that no offsets to the claim exist.

7 7. At any time after receipt by the trustee of a proof of
8 claim, the trustee may give the party submitting the claim a
9 written notice of disallowance of the claim. The notice shall
10 be given by certified mail, return receipt requested, addressed
11 to the party at the address stated in the claim, and to the
12 attorney of record of the party submitting the claim. Such
13 notice of disallowance shall advise the party submitting the
14 claim that the claim has been disallowed and will be forever
15 barred unless suit is filed against the trustee to enforce
16 the claim within thirty days of the date of the mailing of
17 the notice of disallowance. If suit is filed, the provisions
18 in chapter 633 relating to actions to enforce a claim shall
19 apply with the trust and trustee substituted for the estate and
20 personal representative.

21 8. The trustee and creditor may agree to extend the
22 limitations period for filing an action to enforce the claim.
23 If the creditor fails to properly file its claim within the
24 established time period or bring an action to enforce its claim
25 within the established time period, the creditor's claim shall
26 be forever barred.

27 9. The trustee shall give notice to the beneficiaries of the
28 trust as required by section 633A.4213.

29 10. The trustee shall give notice to the spouse of the right
30 to elect to take an elective share of the trust as required
31 by section 633.237 and the right to a spousal allowance as
32 required by section 633A.3114.

33 11. The trustee shall give notice to eligible children
34 not residing with the surviving spouse of their right to an
35 allowance as required by section 633A.3115.

1 Sec. 17. Section 633A.3111, Code 2011, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 **633A.3111 Rights of trustee regarding claims in a probate**
5 **administration.**

6 1. If administration of an estate is commenced in which a
7 revocable trust or a trust in which a holder had at the date
8 of the holder's death a presently exercisable general power
9 of appointment could be held responsible for the payment of
10 debts of the settlor or holder and the charges of the settlor's
11 or holder's estate, the trustee of the trust shall be an
12 interested party in the administration of the estate.

13 2. The trustee shall receive notice of all potential claims
14 against the trust assets from the personal representative of
15 the estate and must either authorize the payments for which
16 the trust may be found liable or be given the opportunity to
17 dispute or defend any such payment.

18 3. If debts of the settlor are paid from trust property,
19 the trustee or trust beneficiaries shall have a right to be
20 reimbursed from the settlor's estate for such payment until the
21 final report of the settlor's estate has been approved, unless
22 the debts have been barred from being collected from the estate
23 by notice pursuant to section 633.230 or 633.304.

24 Sec. 18. Section 633A.3112, Code 2011, is amended by
25 striking the section and inserting in lieu thereof the
26 following:

27 **633A.3112 Trustee's liability for distributions.**

28 1. A trustee who distributes trust assets without making
29 adequate provisions for the payment of debts and charges that
30 are known or reasonably ascertainable at the time of the
31 distribution shall be jointly and severally liable with the
32 beneficiaries to the extent of the distributions made.

33 2. A trustee shall be entitled to indemnification from the
34 beneficiaries for all amounts paid for debts and charges under
35 this section, to the extent of distributions made.

1 Sec. 19. NEW SECTION. 633A.3113 Definitions — revocable
2 trusts.

3 As used in this subchapter:

4 1. “Charges” means the same as defined in section 633.3.

5 2. “Costs of administration” means the same as defined in
6 section 633.3.

7 3. “Debts” means the same as defined in section 633.3.

8 Sec. 20. NEW SECTION. 633A.3114 Allowance to surviving
9 spouse.

10 1. Unless a personal representative has been appointed
11 for the settlor’s estate, following the death of a settlor of
12 a revocable trust, the trustee of such revocable trust shall
13 mail a written notice to the surviving spouse pursuant to
14 section 633.40, subsection 5, notifying the surviving spouse
15 of the surviving spouse’s right to submit an application to
16 the trustee, within four months of service of the notice, for
17 a support allowance for a period of twelve months following
18 the death of the settlor, and for a support allowance for the
19 settlor’s dependents who reside with the spouse for the same
20 period of time.

21 2. Upon receipt of an application for a support allowance,
22 the trustee may set off and pay to the surviving spouse a
23 sufficient amount of trust assets the trustee deems reasonable
24 for the proper support of the surviving spouse for the period
25 of twelve months following the death of the settlor. The
26 trustee shall take into consideration the station of life
27 of the settlor’s surviving spouse, the assets and condition
28 of the trust, the probate and nonprobate assets received by
29 the surviving spouse by reason of the settlor’s death, and
30 the income and other resources of the surviving spouse. The
31 allowance may also include such additional amount as the
32 trustee deems reasonable for the proper support, during such
33 period, of the dependents of the settlor who reside with the
34 surviving spouse. If an application for a support allowance
35 has not been filed within four months following service of

1 the notice by or on behalf of the surviving spouse and the
2 dependents of the settlor who reside with the surviving spouse,
3 the surviving spouse and dependents of the settlor shall
4 be deemed to have waived the right to apply for a support
5 allowance during the administration of the trust.

6 3. A surviving spouse who qualifies for a support allowance
7 under this section may waive the right to such allowance
8 for the surviving spouse and for the dependents of the
9 settlor who reside with the surviving spouse by submitting an
10 affidavit with the trustee acknowledging receipt of notice
11 and irrevocably waiving the right to an allowance under this
12 section.

13 4. The opening of an estate for the settlor shall terminate
14 the right of the surviving spouse to apply for a spousal
15 allowance from the trustee of the settlor's revocable trust or
16 to receive additional support payments from the trust unless
17 the personal representative consents to a continuation of the
18 support payments. If a spousal allowance has been paid from
19 trust assets, the trustee or trust beneficiaries shall have
20 a right subject to court approval to be reimbursed from the
21 settlor's estate for such payment until the final report of the
22 settlor's estate has been approved.

23 **Sec. 21. NEW SECTION. 633A.3115 Allowance to children who**
24 **do not reside with surviving spouse.**

25 1. If the trustee is required to give notice under section
26 633A.3114, the trustee shall also mail, pursuant to section
27 633.40, subsection 5, to the legal guardian of each child
28 qualified under subsection 2 and to each such child or the
29 guardian ad litem for such child if necessary, who has no legal
30 guardian, a written notice regarding the right to request an
31 allowance. The notice shall inform the child and the child's
32 guardian, if applicable, of the right to submit an application
33 to the trustee within four months after service of the notice,
34 for a support allowance for a period of twelve months following
35 the decedent's death.

1 2. Upon receipt of an application for a support allowance,
2 the trustee may make an allowance of an amount the trustee
3 deems reasonable in light of the assets and condition of the
4 trust, to provide for proper support during the period of
5 twelve months following the decedent's death to a child of
6 the decedent who does not reside with the settlor's surviving
7 spouse and is any of the following:

8 a. Less than eighteen years of age.

9 b. Between the ages of eighteen and twenty-two years who is
10 any of the following:

11 (1) Regularly attending an accredited school in pursuance
12 of a course of study leading to a high school diploma or its
13 equivalent.

14 (2) Regularly attending a course of vocational-technical
15 training either as a part of a regular school program or under
16 special arrangements adapted to the individual person's needs.

17 (3) Is, in good faith, a full-time student in a college,
18 university, or community college.

19 (4) Has been accepted for admission to a college,
20 university, or community college and the next regular term has
21 not yet begun.

22 c. Is a child of any age and dependent because of physical
23 or mental disability.

24 3. If an application for a support allowance has not
25 been filed within four months after service of the notice
26 by or on behalf of the child qualifying for an allowance
27 under subsection 2, the child shall be deemed to have waived
28 the right to an allowance under this section. A child who
29 qualifies for an allowance under this section or the guardian
30 for the child, if any, may waive the child's right to such
31 an allowance by submitting an affidavit to the trustee
32 acknowledging receipt of notice and irrevocably waiving the
33 child's right to an allowance under this section.

34 4. The opening of an estate for the settlor shall
35 terminate the right of a child to apply for an allowance from

1 the trustee of the settlor's revocable trust or to receive
2 additional support payments from the trust unless the personal
3 representative consents to a continuation of support payments.
4 If an allowance has been paid from trust assets, the trustee
5 or trust beneficiaries shall have a right to be reimbursed
6 subject to court approval from the settlor's estate for such
7 payment until the final report of the settlor's estate has been
8 approved.

9 Sec. 22. Section 633A.4213, subsection 5, Code 2011, is
10 amended by striking the subsection and inserting in lieu
11 thereof the following:

12 5. a. If the trustee has refused, after written request,
13 to provide an accounting or other required notice under this
14 section to a qualified beneficiary, the court may do any of the
15 following:

16 (1) Order the trustee to comply with the trustee's duties
17 under this section.

18 (2) Assess costs, including attorney fees, against the
19 trustee personally.

20 b. Except as provided in paragraph "a", the only consequence
21 to a trustee's failure to provide the required accounting or
22 notice is that the trustee shall not be able to rely upon the
23 statute of limitations under section 633A.4504.

24 Sec. 23. Section 633A.4504, Code 2011, is amended to read
25 as follows:

26 **633A.4504 Limitation of action against trustee.**

27 1. Unless previously barred by adjudication, consent,
28 or other limitation, a claim against a trustee for breach of
29 trust is barred as to a beneficiary who has received a ~~final~~
30 ~~account~~ an accounting pursuant to section 633A.4213 or other
31 report that adequately disclosing discloses the existence
32 of the claim, unless a proceeding to assert the claim is
33 commenced within one year after the ~~earlier of the receipt~~
34 ~~of the accounting or report of the termination of the trust~~
35 ~~relationship between the trustee and beneficiary.~~ An account

1 accounting or report adequately discloses the existence of
2 a claim if it provides sufficient information so that the
3 beneficiary knows of the claim or reasonably should have
4 inquired into its existence.

5 2. For the purpose of subsection 1, a beneficiary is
6 deemed to have received an ~~account~~ accounting or report in the
7 following instances:

8 a. In the case of an adult who is reasonably capable of
9 understanding the ~~account~~ accounting or report, if it is
10 received by the adult personally.

11 b. In the case of an adult who is not reasonably capable
12 of understanding the ~~account~~ accounting or report, if it is
13 received by the adult's legal representative, including a
14 guardian ad litem or other person appointed for this purpose.

15 c. In the case of a minor, if it is received by the minor's
16 guardian or conservator or, if the minor does not have a
17 guardian or conservator, if it is received by a parent of the
18 minor who does not have a conflict of interest.

19 3. Any claim for breach of trust against a trustee who has
20 presented a ~~final~~ an accounting or report to a beneficiary more
21 than one year prior to July 1, ~~2000~~ 2011, shall be time barred
22 unless some exception stated in this section applies which
23 tolls the statute. Any claim arising under this section within
24 one year of July 1, ~~2000~~ 2011, shall be time barred after one
25 year unless an exception applies to toll the statute.

26 4. For the purposes of this section, "report" means a
27 document including but not limited to a letter, delivered by or
28 on behalf of the trustee to a beneficiary of the trust.

29 **Sec. 24. NEW SECTION. 633A.4606 Interest as general**
30 **partner.**

31 1. Except as otherwise provided in subsection 3 or unless
32 personal liability is imposed in the contract, a trustee who
33 holds an interest as a general partner in a general or limited
34 partnership is not personally liable on a contract entered
35 into by the partnership after the trust's acquisition of

1 the interest if the fiduciary capacity was disclosed in the
2 contract or in a statement previously filed pursuant to section
3 486A.303 or 488.201.

4 2. Except as otherwise provided in subsection 3, a
5 trustee who holds an interest as a general partner is not
6 personally liable for torts committed by the partnership or for
7 obligations arising from ownership or control of the interest
8 unless the trustee is personally at fault.

9 3. The immunity provided by this section does not apply
10 if an interest in the partnership is held by the trustee in a
11 capacity other than that of trustee or is held by the trustee's
12 spouse or one or more of the trustee's descendants, siblings,
13 or parents, or the spouse of any of the trustee's descendants,
14 siblings, or parents.

15 4. If the trustee of a revocable trust holds an interest as
16 a general partner, the settlor shall be personally liable for
17 contracts and other obligations of the partnership as if the
18 settlor were a general partner.

19 Sec. 25. APPLICABILITY.

20 1. The sections of this Act amending sections 422.7, 450.4,
21 633.237, 633.246, 633.374, 633.375, 633.376, 633.377 and
22 633.471 apply to estates of decedents dying on or after July
23 1, 2011.

24 2. The section of this Act amending section 633.561 applies
25 to all judicial proceedings on or after July 1, 2011, in which
26 an order for the appointment of a guardian is sought or has
27 been issued.

28 3. The sections of this Act amending or enacting sections
29 633A.3104, 633A.3108, 633A.3109, 633A.3110, 633A.3112,
30 633A.3113, 633A.3114, and 633A.3115 apply to trusts of settlors
31 dying on or after July 1, 2011.

32 4. The sections of this Act amending or enacting sections
33 633A.2203 and 633A.4606 apply to trusts in existence on or
34 after July 1, 2011.

35

EXPLANATION

1 This bill relates to the probate and trust codes and state
2 inheritance tax and medical assistance claims and includes
3 applicability provisions.

4 TAXATION OF RETIREMENT PLAN BENEFITS — STATE INHERITANCE
5 TAX EXEMPTION. The bill repeals provisions in Code sections
6 422.7 and 450.4 to make conforming changes relating to the
7 exclusion of retirement plan benefits from state inheritance
8 taxes when paid to a beneficiary, consistent with changes to
9 the state inheritance tax statute (Code section 450.4(5)) in
10 H.F. 2483 (2010) (decedent's interest in an employer-sponsored
11 retirement plan or on a decedent's individual retirement
12 account that will be subject to federal income tax when paid to
13 the beneficiary not subject to state inheritance tax). This
14 provision applies to estates of decedents dying on or after
15 July 1, 2011.

16 SPOUSAL ELECTIVE SHARE NOTICES. The bill amends current law
17 relating to notice and time requirements concerning a surviving
18 spouse's right to take an elective share of a decedent's
19 estate. The bill also provides that an affirmative election to
20 take under the will, receive the intestate share, or take under
21 the revocable trust is an irrevocable action. These provisions
22 apply to estates of decedents dying on or after July 1, 2011.

23 SUPPORT ALLOWANCES FROM DECEDENTS' ESTATES. The bill
24 requires that spousal elective share and support allowance
25 notices be mailed to a decedent's spouse even if the spouse
26 is a personal representative, specifies that the surviving
27 spouse may submit an application to the court to exercise the
28 surviving spouse's rights, permits the use of a decedent's (if
29 a settlor) revocable trust assets to pay support allowances
30 if the settlor's estate assets are insufficient, requires the
31 court to consider the settlor's revocable trust assets and
32 other income and assets available to the spouse in determining
33 spousal allowance amounts, allows surviving spouses and any
34 dependent of the settlor to irrevocably waive the right to
35 support allowances, and allows the court to reduce a support

1 allowance if the surviving spouse has received support
2 allowance payments from the decedent's revocable trust. These
3 provisions apply to estates of decedents dying on or after July
4 1, 2011.

5 ESTATE SUPPORT ALLOWANCES — DECEDENT'S SURVIVING SPOUSE
6 AND MINOR CHILDREN. The bill provides consistent hearing
7 notice requirements and court authority to increase or decrease
8 support allowances previously awarded by the court for both a
9 decedent's surviving spouse and a decedent's minor children.
10 These provisions apply to estates of decedents dying on or
11 after July 1, 2011.

12 PERSONAL REPRESENTATIVE — RIGHT OF RETAINER. Current law
13 provides that when a distributee of an estate is indebted to
14 the estate, the personal representative is authorized to treat
15 the amount of the debt as a setoff and to retain the debt out
16 of any property of the estate to which the distributee is
17 entitled. In intestate estates, the personal representative
18 shall have the same right of setoff and retainer against an
19 heir whose ancestor was indebted to the estate. The right
20 of setoff and retainer is prior and superior to the rights
21 of judgment creditors or heirs of the distributee and is not
22 barred by the statute of limitations or by a discharge in
23 bankruptcy. The bill amends this provision to provide that the
24 right of setoff and retainer is barred for debts extinguished
25 by a statute of limitations or by a discharge in bankruptcy.
26 This provision applies to estates of decedents dying on or
27 after July 1, 2011.

28 GUARDIANSHIP PROCEEDINGS — APPOINTED ATTORNEY ACCESS TO
29 HEALTH INFORMATION. The bill provides that if the court
30 determines it would be in a ward's best interest to have legal
31 representation with respect to guardianship proceedings, the
32 court may order that the attorney appointed be given copies
33 of and access to the proposed ward's health information by
34 describing with reasonable specificity the health information
35 to be disclosed or accessed, for the purpose of fulfilling the

1 attorney's responsibilities. This provision applies to all
2 judicial proceedings in which an order for the appointment of a
3 guardian is sought or has been issued on or after July 1, 2011.

4 MODIFICATION OR TERMINATION OF IRREVOCABLE TRUSTS. The bill
5 provides that, in a proceeding by a beneficiary to terminate or
6 modify a trust, a spendthrift provision or a provision giving
7 the trustee discretion to distribute income or principal to a
8 beneficiary or among beneficiaries in the terms of a trust is
9 presumed to be a material purpose of the trust. This provision
10 applies to trusts in existence on or after July 1, 2011.

11 REVOCABLE TRUSTS — CLAIMS — LIMITATIONS — NOTICE. The
12 bill provides that, following the death of a settlor, if the
13 settlor's estate is inadequate to satisfy the debts and charges
14 of the settlor's estate, the property of a revocable trust, to
15 the extent of the value of the property over which the settlor
16 had a power of revocation, is subject to the charges and debts
17 of the settlor's estate unless otherwise barred.

18 The bill provides that, unless previously barred, if notice
19 is published or given within one year of the settlor's death, a
20 proceeding to contest the validity of a revocable trust must be
21 brought within the period specified in that notice. If notice
22 is not published or given within that period, then a proceeding
23 to contest the validity of a trust must be brought no later
24 than one year following the death of the settlor.

25 The bill provides that, in regards to limitations on
26 creditor rights against revocable trust assets after a
27 settlor's death, if notice is published or given within one
28 year of the settlor's death, any claim against the trust assets
29 is barred unless the creditor files a claim as provided for
30 and within the period specified in the notice. If notice is
31 not published or given, a creditor of a deceased settlor of a
32 revocable trust must bring suit to enforce its claim against
33 the assets of the decedent's trust within one year of the
34 decedent's death or be forever barred from collecting against
35 the trust assets.

1 The bill provides that the trustee shall receive notice of
2 all potential claims against the trust assets from the personal
3 representative of the estate. In addition, if the settlor's
4 debts are paid from trust property, the trustee or trust
5 beneficiaries have a right to be reimbursed from the settlor's
6 estate until the final report of that estate has been approved,
7 unless the debts have been barred from collection by the estate
8 under notice provisions pursuant to Code section 633.230 or
9 633.304.

10 The bill makes the terms "charges", "costs of
11 administration", and "debts" consistent between the probate
12 code and the trust code.

13 The bill creates new Code section 633A.3110 (relating to
14 notice to creditors, heirs, and the surviving spouse of the
15 settlor) which incorporate many of the provisions of existing
16 Code section 633A.3109 (relating to notice to creditors,
17 claimants, heirs, spouse, and beneficiaries), repealed and
18 replaced in the bill. This new Code section provides that
19 trustees shall not publish notice more than a year after the
20 settlor's death because of the automatic one-year statute
21 of limitations on filing claims and challenging the trust,
22 that notice by ordinary mail must be given only when notice
23 is published, that notice must be given by the trustee to
24 the beneficiaries of the trust, to the appropriate surviving
25 spouses, and to eligible children not residing with the
26 surviving spouse, that if notice is published, claims can be
27 filed only by claimants who are reasonably ascertainable within
28 the notice period, extends the notice period from 60 days to
29 four months, and provides that notice need not be published in
30 a county solely because real estate is located in that county.

31 These provisions apply to trusts of settlors dying on or
32 after July 1, 2011.

33 SUPPORT ALLOWANCE FROM REVOCABLE TRUSTS — SURVIVING SPOUSE
34 AND MINOR CHILDREN. The bill creates new Code provisions in
35 the trust Code to allow a settlor's surviving spouse and minor

1 children to receive support allowances from the settlor's
2 revocable trust as they would be entitled from the settlor's
3 estate under probate Code sections 633.374 and 633.376. The
4 bill also coordinates support allowance benefits from the
5 settlor's revocable trust and probate estate.

6 These provisions apply to trusts of settlors dying on or
7 after July 1, 2011.

8 TRUSTEE'S ACCOUNTING. The bill allows the court to require
9 a trustee to furnish required reports and notices to qualified
10 beneficiaries of irrevocable trusts and allows the court to
11 assess costs, including attorney fees, against trustees who
12 fail to provide the required reports and notices. The bill
13 also specifies potential consequences for trustees who fail to
14 provide the required reports and notices.

15 LIMITATION ON ACTIONS AGAINST TRUSTEES. Current law bars
16 lawsuits against a trustee for breach of trust unless such
17 lawsuits are filed within one year after the beneficiary's
18 receipt of the final accounting or report of the trustee.
19 The bill applies the statute of limitations to one year from
20 July 1, 2011, for all reports and accountings provided by the
21 trustee unless an exception applies. The bill also makes the
22 terms used to describe such reports and accountings consistent
23 with the terms used in Code section 633A.4213.

24 TRUSTEE LIABILITY FOR PARTNERSHIP INTERESTS. The bill
25 provides that a trustee who holds an interest as a general
26 partner in a general or limited partnership is not personally
27 liable on a contract entered into by the partnership after the
28 trust's acquisition of the interest if the fiduciary capacity
29 was previously disclosed. In addition, a trustee who holds
30 an interest as a general partner is not personally liable
31 for torts committed by the partnership or for obligations
32 arising from ownership or control of the interest unless the
33 trustee is personally at fault. This immunity does not apply
34 if an interest in the partnership is held by the trustee in a
35 capacity other than that of trustee or is held by the trustee's

H.F. 609

1 spouse or one or more of the trustee's descendants, siblings,
2 or parents, or the spouse of any of them. If the trustee of
3 a revocable trust holds an interest as a general partner, the
4 settlor shall be personally liable for contracts and other
5 obligations of the partnership as if the settlor were a general
6 partner. This provision applies to trusts in existence on or
7 after July 1, 2011.